IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 8841 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M/S MANDEEP INDUSTRIES A PARTNERSHIP FIRM THRO ITS

Versus

SWASTIK TRADING CO. A PARTNERSHIP TI'S PARTNER

Appearance:

1. Criminal Misc.Application No. 8841 of 2002

MR MRUGEN K PUROHIT for Petitioner No. 1-1/3

MR YATIN SONI for Respondent No. 1

MR KODEKAR, APP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 18/09/2003

ORAL JUDGEMENT

#. Heard Mr.Purohit, learned counsel for the petitioners, Mr.Yatin Soni, learned counsel for respondent No.1 and Mr.Kodekar, learned APP for respondent No.2.

#. A complaint was filed by the complainant against the present petitioners - original accused directly into the court of the learned Judicial Magistrate, First Class, Gondal under Sections 406, 420 and 114 of IPC on 5.11.2002. On receiving the said complaint, it was numbered as Inquiry Case No.92 of 2002. Learned Additional Chief Judicial Magistrate, Gondal has passed the order under Section 156(3) of the Criminal Procedure Code ("the Code" for short) directing the concerned Investigating Authority to investigate and submit the report within the stipulated time, which gave rise to file the present petition by the petitioners.

#. Initially, the notice was issued and, thereafter, rule was also issued.

#. It is mainly argued by Mr.Purohit, learned counsel for the petitioners that the complaint in question does not disclose the ingredients of offence in question. He has argued that the transaction in question is a civil transaction between the parties, which has been tried to be converted by the respondent complainant into the criminal one and, it is nothing but a clear case of misuse of process of law. He also took me to the various documents, which have been produced by him along with this petition, i.e. from pages 5 to 29 in the compilation. The petitioners have also filed affidavit-in-rejoinder. He has also placed reliance on the unreported judgment of this Court (Coram: M.H.Kadri,J) in Criminal Misc. Application No.164 of 2001 with Criminal Misc. Application Nos.165 and 166 of 2001 delivered on 17.2.2002 and argued that looking to the facts and circumstances of the case and as per the law laid down by this Court, the complaint in question is required to be quashed. He has also produced written submission.

#. On the other hand, Mr.Soni, learned counsel for the respondent complainant, has argued that the complaint in question discloses the prima facie ingredients of offence in question, and, therefore, this Court should not interfere with the complaint in question at this stage. It has been further argued that, after going through the complaint in question, the trial Court has applied its mind and passed the order. While doing so, the Court has only directed the Investigating Authority to investigate

into the matter, and, hence, this Court should not interfere with the order passed by the trial Court at this stage when the investigation is not yet over. It has been further argued that the arguments advanced by the learned counsel for the petitioners and the documents relied upon by him can be taken into consideration by the Investigating Officer at the time of investigation and/or by the trial Court at the time of trial and at the most it is a defence of the petitioners accused, which cannot be taken into consideration at this stage. According to him, what is required to be taken into consideration is the complaint in question and if the complaint in question discloses the ingredients of the offence in question, this Court should not interfere with the complaint in question. It is further argued that, this is not the civil dispute, but, it is only the transaction, which has been taken place between the parties and resulted into the present dispute. It is also argued that the petitioner is a registered firm. He also placed reliance on the decision reported in the case of Nagpur Steel & Alloys Pvt. Ltd. Vs. P.Radhakrishna Alias Rajan and others, reported in 1997 SCC (Cri.) 1073.

#. It is required to be noted here that the arguments, which have been advanced by the learned counsel for the petitioners, are required to be taken into consideration as the defence of the petitioners and / or the same will be available to them at the time of trial. Over and above, the court below has not passed any order except directing the Investigating Officer to investigate into the matter. I have gone through the complaint, and, it appears that the complaint, prima facie, discloses the ingredients of the offence in question. Under these circumstances, the order passed by the Court below is not required to be interfered with at this stage. However, the petitioners are entitled to file appropriate proceedings at the end of investigation. If at all the petitioners got any grievance against the investigation, they can move the the trial court by way of an application for dropping of the proceedings, but, it is also the fact that the trial court has applied its mind and directed the Investigating Officer to investigate into the matter. The judgment upon which the reliance has been placed by the learned counsel for the petitioners is regarding the inquiry by the concerned Judge under Section 202 of the Code when the process was issued, and, therefore, relying upon the same and after evaluating the evidence on record, the Court has come to the conclusion, but, in the present case, the petitioners have entered into the court at the time of passing the preliminary order, and, hence, the petitioners would not

be entitled to the aforesaid judgement relied upon by the learned counsel for the petitioners.

#. Under these circumstances, I do not find any substance in this petition, and, hence, this petition is rejected. Rule is discharged. Interim relief, if any, granted earlier stands vacated forthwith.

(R.P.Dholakia,J)
(pathan)